

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 * * *

4 Gwendolyn Renee Reddic,
5 Plaintiff,
6 v.
7 Social Security Administration, et al.,
8 Defendant.
9

Case No. 2:23-cv-01182-BNW

ORDER

10 Presently before the court is Plaintiff's application to proceed *in forma pauperis* (ECF No.
11 5).

12 **I. In Forma Pauperis Application**

13 Plaintiff submitted the declaration required by 28 U.S.C. § 1915(a) showing an inability to
14 prepay fees and costs or give security for them. Accordingly, Plaintiff's request to proceed *in*
15 *forma pauperis* will be granted.

16 **II. Screening the Complaint**

17 Upon granting a request to proceed *in forma pauperis*, a court must screen the complaint
18 under 28 U.S.C. § 1915(e)(2). In screening the complaint, a court must identify cognizable claims
19 and dismiss claims that are frivolous, malicious, fail to state a claim on which relief may be
20 granted, or seek monetary relief from a defendant who is immune from such relief. 28 U.S.C.
21 § 1915(e)(2). Dismissal for failure to state a claim under § 1915(e)(2) incorporates the standard
22 for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). *Watison v. Carter*, 668
23 F.3d 1108, 1112 (9th Cir. 2012). To survive § 1915 review, a complaint must "contain sufficient
24 factual matter, accepted as true, to state a claim to relief that is plausible on its face." *See Ashcroft*
25 *v. Iqbal*, 556 U.S. 662, 678 (2009). In considering whether the complaint is sufficient to state a
26 claim, all allegations of material fact are taken as true and construed in the light most favorable to
27 the plaintiff. *Wylter Summit P'ship v. Turner Broad. Sys. Inc.*, 135 F.3d 658, 661 (9th Cir. 1998)
28 (citation omitted). Although the standard under Rule 12(b)(6) does not require detailed factual

1 allegations, a plaintiff must provide more than mere labels and conclusions. *Bell Atlantic Corp. v.*
2 *Twombly*, 550 U.S. 544, 555 (2007). A formulaic recitation of the elements of a cause of action is
3 insufficient. *Id.* Unless it is clear the complaint's deficiencies could not be cured through
4 amendment, a plaintiff should be given leave to amend the complaint with notice regarding the
5 complaint's deficiencies. *Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

6 If a plaintiff's complaint challenges a decision by the Social Security Administration
7 ("SSA"), before filing a lawsuit, the plaintiff must exhaust administrative remedies. *See* 42 U.S.C.
8 § 405(g); *see also Bass v. Social Sec. Admin.*, 872 F.2d 832, 833 (9th Cir. 1989) (per curiam)
9 ("Section 405(g) provides that a civil action may be brought only after (1) the claimant has been
10 party to a hearing held by the Secretary, and (2) the Secretary has made a final decision on the
11 claim"). Generally, if the SSA denies a claimant's application for disability benefits, the claimant
12 may request reconsideration of the decision. If the claim is denied at the reconsideration level, a
13 claimant may request a hearing before an administrative law judge ("ALJ"). If the ALJ denies the
14 claim, a claimant may request review of the decision by the Appeals Council. If the Appeals
15 Council declines to review the ALJ's decision, a claimant may then request judicial review. *See*
16 *generally* 20 C.F.R. §§ 404, 416.

17 Once a plaintiff has exhausted administrative remedies, he may obtain judicial review of a
18 SSA decision denying benefits by filing suit within 60 days after notice of a final decision. *Id.* An
19 action for judicial review of a determination by the SSA must be brought "in the district court of
20 the United States for the judicial district in which the plaintiff resides." *Id.* The complaint should
21 state the nature of plaintiff's disability, when plaintiff claims he became disabled, and when and
22 how he exhausted his administrative remedies. The complaint should also contain a plain, short,
23 and concise statement identifying the nature of plaintiff's disagreement with the determination
24 made by the Social Security Administration and show that plaintiff is entitled to relief. A district
25 court can affirm, modify, reverse, or remand a decision if plaintiff has exhausted his
26 administrative remedies and timely filed a civil action. However, judicial review of the
27 Commissioner's decision to deny benefits is limited to determining: (a) whether there is
28 substantial evidence in the record as a whole to support the findings of the Commissioner; and (b)

1 whether the correct legal standards were applied. *Morgan v. Commissioner of the Social Security*
2 *Adm.*, 169 F.3d 595, 599 (9th Cir. 1999).

3 Here, Plaintiff does not make clear what the nature of her complaint is. She alleges that
4 she has not been paid the correct amount but does not explain whether this is due to a legally
5 erroneous determination and, if so, what the nature of the error is. As a result, this Court will
6 dismiss the complaint without prejudice so that Plaintiff can clarify what is the review she seeks.
7 As explained above, to the extent she is claiming the ALJ erred, she must first show that she has
8 exhausted administrative remedies.

9 Based on the foregoing, IT IS ORDERED that:

10 1. Plaintiff's request to proceed *in forma pauperis* (ECF No. 5) is
11 GRANTED. Plaintiff will not be required to pay the filing fee of \$402.00.

12 2. Plaintiff is permitted to maintain this action to conclusion without the
13 necessity of prepayment of any additional fees or costs or giving security for them. This Order
14 granting leave to proceed *in forma pauperis* does not extend to the issuance of subpoenas at the
15 government's expense.

16 3. The Clerk of Court is instructed to detach and file the Complaint (ECF No.
17 1-1).

18 4. If Plaintiff chooses to amend her complaint, she must do so before January
19 9, 2024. Failure to comply with this order will result in a recommendation that this case be
20 dismissed. Additionally, Plaintiff is advised that if he files an amended complaint, the original
21 complaint (ECF No. 1-1) no longer serves any function in this case. As such, the amended
22 complaint must be complete in and of itself without reference to prior pleadings or other
23 documents. The Court cannot refer to a prior pleading or other documents to make Plaintiff's
24 amended complaint complete.

25 **IT IS SO ORDERED**

26 **DATED:** 10:07 am, December 08, 2023

27 

28 **BRENDA WEKSLER**
UNITED STATES MAGISTRATE JUDGE